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BY being in London one learns some things about the administration of justice and the course of Law Reform which would seldom or never come to the knowledge of an American lawyer at home. But it is, after all, matter of surprise how very little of that which it is most important to know in regard to English jurisprudence may not be fully understood by a careful study of the Reports, and a diligent reading of the Law Journals, and the elementary treatises. And the very little that we do come more fully to understand by a closer inspection, or to understand differently, perhaps, from what we otherwise should, cannot be regarded as altogether of unmixed good.

For instance, one cannot feel quite the same veneration for the wisdom of a decision in the British court of last resort, that august tribunal, the House of Lords, after carefully watching the course of a trial there, that he would from merely reading and reflecting upon the subject. One naturally reflects upon a subject of that character with some reference to the vastness of the interests at stake, and comes to regard the character of the court which gives them their final shape and destination, as important and weighty somewhat in proportion to the vastness or the insignificance of those interests in themselves. And men themselves, while sitting in the seat of justice, evoke greater and nobler powers

of reflection, discrimination, and judgment, as the demands for the exercise of such powers rise. Hence, we very naturally expect the weight and dignity of the English House of Lords to rise above that of all other judicial tribunals, in proportion as the vastness and variety of the questions finally determined by it are higher and greater than those of almost any other court. But when we come to view it with the naked eye of sense, we feel greatly in danger of losing the ordinary standard of weight and measurement. To an American it has very much the appearance of a trial before a committee of the legislature, with even less form and ceremony, if possible. It is true that lookers-on approach with something more of reserve. They meet more public men and more subordinate officers, and at first blush there is more of authority and solemnity in the going forward of the hearing. But this, so far as any undue reserve is concerned, is rather apparent than real. For the moment one breaks through the crust of this official reserve, he finds himself accepted in the fullest and most cordial manner, and thereafter really treated with more watchfulness of attention, and less of official hauteur, than almost anywhere else. So that all one needs, in such cases, is the proper introduction to secure the fullest and most considerate attention; or, if he choose to float along with the mass of spectators, and to conform to the mere outward conventionality, which is by far the readiest and most successful mode of finding out the exterior of judicial procedure everywhere, there will not be the slightest obstacle to *standing* all day in the purlieus of an English court of justice, or sitting, indeed, if one can only find room—and a chair or seat to sit upon.

But to return to the House of Lords. The room itself is a most complete model of graceful and elegant architectural fitness and proportion. It is regarded both in effect and in detail, as one of the most perfect specimens of architectural beauty in the world. It would be impossible, in a communication of this character, to give the slighest outline of its proportions or adaptations, and especially of its many perfect gems of beauty in the filling up of the detail. Suffice it to say that it is the very *chef d'œuvre* of Sir Charles Barry's great and crowning work of life, the Westminster Palace or Parliament Houses, covering nearly eight acres of ground, and affording the most perfect model, in modern times, of the rich and elegant tracery of the Gothic architecture.

The throne and chair of state for the Queen to occupy in opening parliament and other state occasions here, stands at the head of the chamber of the Lords. This is approached on every side by three or four circular steps giving two or three feet in elevation; and a small space beside the steps is railed off from the main area of the room, and surrounds the throne. The upper end of the middle space between the seats in the main hall occupied by the Lords, is occupied by the woolsack, of which we have all heard so much, and really know so little. It is covered with red velvet or plush, or some other rich material, and is nearly six feet square, being divided unequally by a kind of board rising near the Chancellor's back, who sits upon the side remote from the throne facing the house. Front of the Chancellor is a large table surrounded by the clerks and under-clerks, and opposite this on the front bench at the right, are the members of the ministry belonging to the House of Lords, and on the opposite side are the leading Lords of the opposition, and the supporters of each side occupy the back benches on either side. Further along towards the principal entrance of the hall is a space about ten feet square, around which the Lord Chancellor and the other Law Lords sit during the argument of appeals from the courts in England, Ireland, and Scotland. The bar is facing this, on the side of the entrance, being about six feet square, and fenced off from the area occupied by the Law Lords by a single board rising about breast high, with shelves just below on which the advocate may rest his books and papers.

At the time I watched an argument there for a few minutes, the present Attorney-General, Sir JOHN ROLT, was discussing a Scottish appeal in his usual quiet manner, through an opening towards the Law Lords, which seemed very like a window. The presiding Law Lord on that occasion was the twice Lord Chancellor, CRANWORTH, a name almost as familiar as any other in America. The Lord Chancellor, CHELMSFORD, for some reason was not able to sit that day. My Lord CRANWORTH was supported on his right by Lord WESTBURY, the late Lord Chancellor, who was somewhat unceremoniously displaced some few months ago by a resolution of want of confidence on the part of the Commons. There was every reason to feel that the case was receiving a very patient examination both by court and counsel. The papers were very voluminous, all being in print, and bound in volumes, and

referred to by counsel, by the page, when the Law Lords would very deliberately turn to the place, and after listening to the suggestions of counsel, suggest their own difficulties or doubts and obtain such relief as might be in the power of the advocate to give.

There is one feature in all English courts, so far as we have observed, which is worthy of all commendation; and it is one which we do not always witness in the American courts, to the same extent. We mean the entire absence of all apparent anxiety to bend the decision to meet any preconceived theory, either of politics, religion, or morals, or even of philosophy. In other words, it is a seeming indifference to the present popular sentiment. We say the *present* popular sentiment, because we do not intend to intimate that a judge, any more than any other man, should attempt to educate himself up to the point of absolute indifference to a wise, far-seeing, and just public opinion; or that he can, if he would, feel entirely indifferent to that just boon of a good name and fame, which is the inevitable concomitant of worthy actions worthily performed. All we mean is, that a judge, as well as any other public man, or private man indeed, who in all that he says, and all that he does, is measuring himself and his conduct by the low standard of present public opinion, is not likely to accomplish any very heroic deeds, or to initiate any very permanent or valuable reforms, either in legislation or general jurisprudence. We can comprehend well enough that even this low standard of judicial action is not the very lowest. There are still many lower depths unexplored we trust, as yet, by any American judicial officer of high grade, and which, unfortunately for the credit of the mother country, and fortunately for the warning of her offspring, have figured but too prominently, at different periods in English history. We feel entirely sensible that even a judge, who struggles all his life to keep in with popular sentiment, must be regarded as an amiable and kind-hearted man, if nothing more. We certainly could not regard such a man as in any sense a bad man. He could not be classed either with JEFFRIES or SCROGGS, and certainly not with Lord BACON or his more recent imitators.

But one must be either very short-sighted or very timid who cannot rise above such a standard. A judge who feels that his highest and noblest aims are centered in making himself a reputa-

tion, either present or future, is certainly not worthy of the very highest degree of public confidence. One may, indeed, act from far lower and base motives. He may be a mere blind partisan; he may have espoused certain theories of philosophy, or politics, or religion, with such intense zeal, that he will in the end be in danger of becoming morbid upon the subject, and, with the best intentions, he may become incapable of seeing any good, or any rights, out of that particular line of thought which he may have espoused. And we conceive it possible for a very well-meaning judge, and one of large capacity, originally, and of very considerable attainments, to become so perverted by partisanship as to be really incapable of viewing any subject, except through a false or perverted medium. There is no doubt great danger, in periods of great political or partisan heat, that in regard to questions affecting large and fundamental interests in governmental and social relations, something of this kind may sometimes occur, even in discussions and decisions before or by the gravest judicial tribunals. We do not know that such things are likely to occur in the American judicial tribunals of last resort, in regard to the vast and almost illimitable public interests now so much in agitation. We hope it is not so; and that there is no danger in that direction. Some things have occurred, within the last few years, especially in the decisions of the national tribunal of last resort, tending very strongly to show that there is really there no danger of this character, and that those, if any such there be, who believe, or affect to believe, that the judicial tribunals of the country should be subordinated to the voice of the numerical popular majority, are not likely to find support or countenance in the conduct of the judges themselves. We hope this may be so. We believe it will prove so, and that the country will herein find another, in addition to the many grounds already existing, to think well of the national sagacity of the late President Lincoln in knowing how to select, among his own friends at least, the best man for any particular place. Half almost, numerically, of that august tribunal, to whose arbitrament more sublime interests are committed than to any judicial tribunal upon the face of the habitable globe, practically, at this moment, more than half the efficient force of that court, owe their position upon the bench to the judgment of Abraham Lincoln. And it must be perceived, we think, by men who comprehend, in any proper measure, the

vast responsibilities of such a tribunal in such a time, that the man who has, or has had the making of a majority of the working force of the judiciary, really wields a more awful responsibility than any other whatever. We know that the legislative power of a nation is almost supreme, and that it may seem for a time quite irresistible. But the formative power of a wise, an able, and an upright court of last resort, in a quiet and impressive manner, wields a force ten times as powerful as it is possible for any legislative power to put forth, and one that is ten thousand times more efficient either for good or for evil. Those men, if any such there be, who desire to break the power, or check the independence of that conservative and life-giving tribunal in the sustaining of law and order, and of every other interest dear to the true patriot, if they are at all aware of what they ask, and of the awful consequences of obtaining a full answer to their prayer, should be held up to public indignation and scorn as the basest and vilest traitors to their country: such men, if they really comprehend what it is that they ask, should be classed among the wickedest of the fomenters of the late rebellion. But we do not suppose it possible for any man, at all capable of estimating the awful consequences of breaking down the legitimate power of a pure and independent judiciary in a free country, to be base and degraded enough to desire any such thing.

But, to return from this partial digression, it is certainly a very pleasant sight to sit in an English court and witness the entire absence of all rivalry, not only between the court and the bar, but apparently between the different members of the bar. Court and counsel alike, seem to feel that every other consideration must be laid aside except that of reaching the absolute justice of the case. In this pursuit there is observable a quietness in the course of the arguments of counsel, and especially in the conversational discussions between the court and the counsel, which cannot fail far more effectually to enable each to see the other's views, difficulties, and doubts, than if the same were had in a spirit of controversy and opposition, and with a disposition occasionally apparent in our own country, to show the spectators the superiority of the bench above the bar. Nothing could more effectually belittle the court, without in the same degree, elevating the bar. A truly great judge is never jealous of any one, and least of all, of his

bar, which is his brightest crown, the very jewels of his judicial life.

But this communication will be in danger of too great extension. The most important decision made in the English courts within the last few months, is that in the case of *Gardiner* v. *The London, Chatham, and Dover Railway*, 15 Weekly Reporter 325, by the Lords Justices in the Court of Chancery Appeal, near the last of January. By this case it was determined that railway debentures in England, which are a mortgage of the "undertaking," in terms, do not create any specific lien upon any portion of the property itself belonging to the company, but only a right to receive the net earnings of the works, which includes all the rolling stock and fixtures as incidents, until the last is paid. But in the mean time the "undertaking,"which is but another name for all the works with all its incidents and accessories, remains under the management and control of the officers of the corporation itself, or of trustees appointed by the parties, the courts refusing to assume the responsibility of placing the road, or the "undertaking," as it is called in the act creating the debentures, under the management of its own officers. This is a very important decision, and the cool, careful, and well-reasoned opinion of the present Lord Justice CAIRNS, who has since been promoted, at the early age of less than fifty, to the House of Lords, by special patent, will repay patient perusal and study, and may, possibly, lead to very important modifications of the present views in America in regard to the rights created by railway mortgages and preferred stocks. We hope soon to give this very able opinion at length. It has created considerable sensation in England among the extensive holders of this species of railway security, and has already led to numerous schemes of legislative reform in Parliament, none of which have yet been sufficiently matured to be of interest to our readers.

We were present a few days since in the Court of Divorce and Matrimonial Causes, during the argument and the summing up of the court to the jury, in the important cause of *Wight* v. *Wight and Field*, which was a suit by the husband, Major-General Wight, of the British army, for divorce, by reason of the alleged adultery of the wife with the co-respondent. We were especially and favorably impressed with the quiet conversational tone of the leading counsel, Sir Robert Collier, late Solicitor-General, and

Dr. Spinks, Q. C., and the especial fairness and freedom from all parade or attempt at oratorical effect of the charge given to the jury by the learned judge, Sir J. P. WILDE. We noticed with especial gratification that the English judges address the jury sitting, the jury also remaining in the same position. We have long regarded this as the only mode in which a case could be fairly presented to a jury by the court, and practised it during most of our own long period of service in that capacity, but we believe this is rather an exceptional mode of proceeding in the American courts, and as far as we know, as a general rule, is confined to New Hampshire,[1] where the change occurred, at an early day, by the embarrassment of one of their ablest Chief Justices, the late JEREMIAH SMITH, in delivering his first charge to the jury, which proceeded so far as to compel the judge to resume his seat and to request the jury to do the same, when he continued his charge in a very able and satisfactory manner, never after attempting to address the jury standing, and this precedent thus accidentally introduced soon became general in that state, and has so continued ever since. It also exists in some portions of Vermont, but not universally. But on the occasion to which we refer the learned judge continued his instructions to the jury for more than an hour in the most quiet and conversational mode.

1. Dwelling upon the general duties of jurymen, and especially to use forbearance in judgment, and to guard against disagreements.

2. Summing up many general views affecting this class of cases in general, and this case in particular.

3. Explaining the views of the counsel upon one side and the

[1] We venture to suggest that our learned colleague is in error, in this view. It is the universal habit of judges in Pennsylvania to sit while charging the jury, and we have occasionally been present at trials in New York, New Jersey, Ohio, and Illinois, in all of which the judges remained seated, and we think the contrary habit is peculiar and local to the New England courts, even if it obtain in all of those. We have the authority of a distinguished ex-judge of the Supreme Court of New Jersey for saying that when he was a junior at the bar, it was the general custom for the judge to rise in addressing the *grand jury*, but even that has since fallen into disuse.

The only occasion upon which a Pennsylvania judge stands is while pronouncing sentence of death, and we think the undignified novelty of the judge's rising to charge a jury would be resented alike by the bench and bar of that state, as savoring far too much of advocacy rather than judicial serenity. J. T. M.

other, and stating how they had been answered or might be obviated.

4. Narrowing the case down to its turning-points by eliminating all questions in regard to which there seemed to remain no serious doubt, and plainly and fully stating the few points of doubt upon which the case must turn.

5. Reading from his minutes in detail the important testimony bearing upon these leading points.

6. Posting up and balancing all the evidence and leaving it freely and fairly to the determination of the jury.

The charge was, on the whole, a model in its way, both in matter and manner. I. F. R.

RECENT AMERICAN DECISIONS.

Supreme Court of New York, at Nisi Prius.

SANBORN v. HERRING AND OTHERS.

Where a manufacturer keeps his wares ready made for sale to customers, he stands in the same relation to a purchaser, as to warranty, as any other merchant selling the same article. There is no implied warranty of quality arising from the mere fact that the seller is also the maker.

Where a manufacturer of burglar-proof safes exhibits two safes differing in price, and the customer takes the cheaper one upon the assurance that it is equally secure as a protection against burglars, which proves to be untrue, the purchaser may recover the difference between the value of the safe as it was and the value of such a safe as it was represented to be.

But if a safemaker sells a safe with an express warranty that it is burglar-proof, or upon representations to that effect fraudulently made to the purchaser, with intent that they should form part of the contract, the purchaser may recover the value of the money or goods lost by the breaking and robbing of his safe.

THIS case was tried at the last April circuit in New York, before the Hon. NOAH DAVIS, of the Supreme Court, and a jury. It arose out of the following facts. On Saturday night, the 27th August, 1864, the plaintiff's safe was broken open at Sterling, Illinois, and robbed by burglars of $30,000 in money and government bonds. He had purchased the safe in March, 1862, at the agency in Chicago, of the well-known safe manufacturers, Herring & Co. of New York. The action was brought to recover